



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5

77 WEST JACKSON BOULEVARD

CHICAGO, IL 60604-3590

JUN 11 2013

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

REPLY TO THE ATTENTION OF:

Thomas Green
Manager, Environmental Services
Edward C. Levy Company
51445 W. 12 Mile Road
Wixom, Michigan 48393

Re: In the Matter of: The Levy Company -- Burns Harbor, Indiana - CAFO
Docket No. CAA-05-2013-0028

Dear Mr. Green:

Enclosed is a file-stamped Consent Agreement and Final Order (CAFO) which resolves The Levy Company's (Levy's) penalty liability stemming from the Notice of Violation issued to Levy on June 29, 2012 and Docket No. CAA-05-2013-0028. As indicated by the filing stamp on its first page, we filed the CAFO with the Regional Hearing Clerk on

JUN 11 2013

Pursuant to paragraph 33 of the CAFO, Levy must pay the civil penalty within 30 days of JUN 11 2013. Your check must display the case name "The Levy Company -- Burns Harbor, Indiana -- CAFO" Docket No. CAA-05-2013-0028.

Please direct any questions regarding this case to Susan Prout, Associate Regional Counsel, at 312- 353-1029.

Sincerely,

Nathan A. Frank, P.E.
Chief

Air Enforcement and Compliance Assurance Section (IL/IN)

Enclosure

cc: Ann Coyle, Regional Judicial Officer (C-14J)
U.S. EPA, Region 5

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

In the Matter of:)	Docket No. <u>CAA-05-2013-0028</u>
)	
The Levy Company)	Proceeding to Assess a Civil Penalty
Burns Harbor, Indiana,)	Under Section 113(d) of the Clean Air Act,
)	42 U.S.C. § 7413(d)
Respondent.)	
)	

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Consent Agreement and Final Order

Preliminary Statement

1. This is an administrative action commenced and concluded under Section 113(d) of the Clean Air Act (the CAA), 42 U.S.C. § 7413(d), and Sections 22.1(a)(2), 22.13(b) and 22.18(b)(2) and (3) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules), as codified at 40 C.F.R. Part 22.

2. Complainant is the Director of the Air and Radiation Division, U.S. Environmental Protection Agency (EPA), Region 5.

3. Respondent is The Levy Company (Levy), a Michigan corporation doing business in the state of Indiana at the time of the alleged violations.

4. Where the parties agree to settle one or more causes of action before the filing of a complaint, the administrative action may be commenced and concluded simultaneously by the issuance of a consent agreement and final order (CAFO). 40 C.F.R. § 22.13(b).

5. The parties agree that settling this action without the filing of a complaint or the adjudication of any issue of fact or law is in their interest and in the public interest.

6. Respondent consents to the assessment of the civil penalty specified in this CAFO and to the terms of this CAFO.

Jurisdiction and Waiver of Right to Hearing

7. Respondent admits the jurisdictional allegations in this CAFO and neither admits nor denies the factual allegations in this CAFO.

8. Respondent waives its right to request a hearing as provided at 40 C.F.R. § 22.15(c), any right to contest the allegations in this CAFO, and its right to appeal this CAFO.

Statutory and Regulatory Background

9. Title V of the CAA, 42 U.S.C. §§ 7661-7661f, established an operating permit program for major sources of air pollution. Section 502(d) of the CAA, 42 U.S.C. § 7661a(d), provides that each state must submit to EPA a permit program meeting the requirements of Title V.

10. In accordance with Section 502(b) of the CAA, 42 U.S.C. § 7661a(b), EPA promulgated regulations implementing Title V of the CAA. See 57 Fed. Reg. 32295 (July 21, 1992). Those regulations are codified at 40 C.F.R. Part 70.

11. Section 502(a) of the CAA, 42 U.S.C. § 7661a(a), and 40 C.F.R. § 70.7(b) provide that, after the effective date of any permit program approved or promulgated under Title V of the CAA, no source subject to Title V may operate except in compliance with a Title V permit.

12. EPA approved Indiana's Title V program on December 4, 2001. See 66 Fed. Reg. 62969.

13. The Indiana Department of Environmental Management issued Levy a Title V operating permit T127-7656-00026 on June 30, 2006, and a Significant Source Modification (No. 127-30302-00026) to its Title V operating permit on June 14, 2011.

14. Part C.2(a) of Levy's Title V permit requires Levy to limit opacity emissions at its entire source to an average of forty percent (40%) in any one six-minute averaging period.

15. The regulation at 40 C.F.R. § 70.7(b) prohibits a source from operating except in compliance with a permit issued under a 40 C.F.R. Part 70 program.

16. Section 502(a) of the CAA, 42 U.S.C. § 7661a(a), provides that it is unlawful for any person to violate any requirement of a permit issued under Title V of the CAA.

17. Section 110 of the CAA, 42 U.S.C. § 7410, requires each state to adopt and submit to EPA for approval a State Implementation Plan (SIP) that provides for the attainment and maintenance of the National Ambient Air Quality Standards within the state.

18. On July 16, 2002 (67 Fed. Reg. 46589), EPA published its final action approving Indiana's SIP revision request regarding opacity. The rule became federally effective on August 15, 2002.

19. 326 IAC 5-1-2(1)(A) of the Indiana SIP states that opacity shall not exceed an average of forty percent (40%) in any one six-minute averaging period.

20. 326 IAC 5-1-2(1)(A) is incorporated into Levy's Title V permit in Part C.2(a).

21. The Administrator of EPA (the Administrator) may assess a civil penalty of up to \$37,500 per day of violation up to a total of \$295,000 for violations that occurred after January 12, 2009 under Section 113(d)(1) of the CAA, 42 U.S.C. § 7413(d)(1), and 40 C.F.R. Part 19.

22. Section 113(d)(1) limits the Administrator's authority to matters where the first alleged date of violation occurred no more than 12 months prior to initiation of the administrative action, except where the Administrator and the Attorney General of the United

States jointly determine that a matter involving a longer period of violation is appropriate for an administrative penalty action.

23. The Administrator and the Attorney General of the United States, each through their respective delegates, have determined jointly that an administrative penalty action is appropriate for the period of violations alleged in this CAFO.

Factual Allegations and Alleged Violations

24. The Complainant alleges the following in paragraphs 24 through 29.

25. On June 28, 2011, Levy owned and operated a blast furnace and basic oxygen furnace slag Separation Plant and Finishing Plant on the premises of the ArcelorMittal integrated steel plant located at U.S. Highway 12 in Burns Harbor, Indiana (facility).

26. As of January 1, 2012, Levy no longer operates at the ArcelorMittal facility in Burns Harbor, Indiana.

27. Particulate matter (PM) emissions at the facility, including at the conveyors, screens, feeders, hoppers, crushers, magnetic head pulleys and stackers of the Separation Plant, were controlled by wet suppression.

28. Opacity is used as a surrogate for PM emissions and provides qualitative information on the operation and maintenance of particulate control equipment.

29. In 2011, the area in which the facility is located was designated as a non-attainment area for the 1997 annual fine particulate matter (PM_{2.5}) standard. See 70 Fed. Reg. 944.

30. On June 28, 2011, a certified EPA inspector read opacity in accordance with 40 C.F.R. Part 60, Appendix A, Reference Method 9 at Levy's Separation Plant. A summary of the readings is below:

Time (PM)	6-Minute Average Opacity (%)
5:05 - 5:06	
5:06 - 5:07	
5:07 - 5:08	
5:08 - 5:09	
5:09 - 5:10	
5:10 - 5:11	55.0
5:11 - 5:12	63.8
5:12 - 5:13	65.6
5:13 - 5:14	72.7
5:14 - 5:15	76.9
5:15 - 5:16	82.9
5:16 - 5:17	86.5
5:17 - 5:18	87.1
5:18 - 5:19	82.3
5:19 - 5:20	76.7
5:20 - 5:21	66.5
5:21 - 5:22	56.7
5:22 - 5:23	46.7
5:23 - 5:24	38.8

Total observation time - 18 minutes (05:05 - 05:24 PM)

Total time exceeding standard from 05:05 - 05:24 PM - 18 minutes

31. Levy's excess opacity emissions from its Separation Plant are violations of the opacity limit found in Part C.2(a) of Levy's Title V permit and of the applicable Indiana SIP requirements specified in the Title V permit.

Civil Penalty

32. Based on analysis of the factors specified in Section 113(e) of the CAA, 42 U.S.C. § 7413(e), the facts of this case, and Levy's cooperation, Complainant has determined that an appropriate civil penalty to settle this action is \$37,500.

33. Within 30 days after the effective date of this CAFO, Respondent must pay a \$37,500 civil penalty by sending a cashier's or certified check, payable to "Treasurer, United States of America," to:

U.S. Bank
Government Lockbox 979077
U.S. EPA Fines and Penalties
1005 Convention Plaza
Mail Station SL-MO-C2-GL
St. Louis, Missouri 63101

The check must note Respondent's name, docket number of this CAFO, and the billing document number.

34. Respondent must send a notice of payment that states Respondent's name, the docket number of this CAFO, and the billing document number to EPA at the following addresses when it pays the penalty:

Attn: Compliance Tracker (AE-17J)
Air Enforcement and Compliance Assurance Branch
Air and Radiation Division
U.S. Environmental Protection Agency, Region 5
77 W. Jackson Boulevard
Chicago, Illinois 60604

Susan Prout (C-14J)
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 5
77 W. Jackson Boulevard
Chicago, Illinois 60604

Regional Hearing Clerk (E-19J)
U.S. Environmental Protection Agency, Region 5
77 W. Jackson Boulevard
Chicago, Illinois 60604

35. This civil penalty is not deductible for federal tax purposes.

36. If Respondent does not pay timely the civil penalty, EPA may request the Attorney General of the United States to bring an action to collect any unpaid portion of the penalty with interest, nonpayment penalties and the United States enforcement expenses for the collection action under Section 113(d)(5) of the CAA, 42 U.S.C. § 7413(d)(5). The validity, amount and appropriateness of the civil penalty are not reviewable in a collection action.

37. Respondent must pay the following on any amount overdue under this CAFO. Interest will accrue on any overdue amount from the date payment was due at a rate established by the Secretary of the Treasury pursuant to 26 U.S.C. § 6621(a)(2). Respondent must pay the United States enforcement expenses, including but not limited to attorneys fees and costs incurred by the United States for collection proceedings. In addition, Respondent must pay a quarterly nonpayment penalty each quarter during which the assessed penalty is overdue. This nonpayment penalty will be 10 percent of the aggregate amount of the outstanding penalties and nonpayment penalties accrued from the beginning of the quarter. 42 U.S.C. § 7413(d)(5).

General Provisions

38. This CAFO resolves only Respondent's liability for federal civil penalties for the violations alleged in this CAFO.

39. The CAFO does not affect the rights of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violation of law.

40. The execution of this CAFO by Respondent is not an admission to any alleged violation.

41. This CAFO does not affect Respondent's responsibility to comply with the CAA and other applicable federal, state and local laws. Except as provided in paragraph 38, above, compliance with this CAFO will not be a defense to any actions subsequently commenced pursuant to federal laws administered by EPA.

42. Respondent certifies that it is complying fully with Title V and Indiana SIP requirements.

43. This CAFO constitutes an "enforcement response" as that term is used in EPA's Clean Air Act Stationary Civil Penalty Policy to determine Respondent's "full compliance history" under Section 113(e) of the CAA, 42 U.S.C. § 7413(e).

44. The terms of this CAFO bind Respondent, its successors and assigns.


45. Each person signing this consent agreement certifies that he or she has the authority to sign for the party whom he or she represents and to bind that party to its terms.

46. Each party agrees to bear its own costs and attorneys fees in this action.

47. This CAFO constitutes the entire agreement between the parties.

Bob Scholz, Respondent

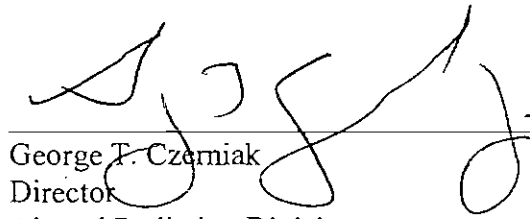
5/13/2013
Date



Bob Scholz
Vice President/Chief Financial Officer
The Levy Company

United States Environmental Protection Agency, Complainant

6/5/13
Date



George T. Czerniak
Director
Air and Radiation Division
U.S. Environmental Protection Agency, Region 5

Consent Agreement and Final Order

In the Matter of: The Levy Company – Burns Harbor, Indiana

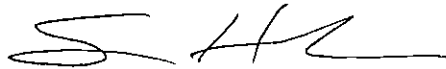
Docket No. CAA-05-2013-0028

Final Order

This Consent Agreement and Final Order, as agreed to by the parties, shall become effective immediately upon filing with the Regional Hearing Clerk. This Final Order concludes this proceeding pursuant to 40 C.F.R. §§ 22.18 and 22.31. IT IS SO ORDERED.

6/6/13

Date



Susan Hedman
Regional Administrator
U.S. Environmental Protection Agency
Region 5

Consent Agreement and Final Order

In the Matter of: The Levy Company – Burns Harbor, Indiana

Docket No. CAA-05-2013-0028

Certificate of Service

I certify that I filed the original and one copy of the Consent Agreement and Final Order (CAFO), Docket No. CAA-05-2013-0028, with the Regional Hearing Clerk (E-19J), United States Environmental Protection Agency, Region 5, 77-W. Jackson Boulevard, Chicago, Illinois 60604, and that I mailed the second original copy to Respondent by first-class, postage prepaid, certified mail, return receipt requested, by placing it in the custody of the United States Postal Service addressed as follows:

Thomas Green
Manager, Environmental Services
Edward C. Levy Company
51445 W. 12 Mile Road
Wixom, Michigan 48393

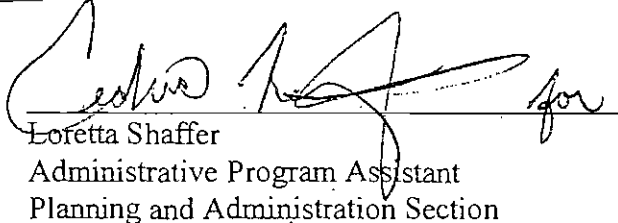
I certify that I delivered a correct copy of the CAFO by intra-office mail, addressed as follows:

Ann Coyle
Regional Judicial Officer (C-14J)
U.S. Environmental Protection Agency
77 W. Jackson Boulevard
Chicago, Illinois 60604

I also certify that I mailed a correct copy of the CAFO by first-class mail to:

Phil Perry, Chief
Compliance and Enforcement Section
Office of Air Quality
Indiana Department of Environmental Management
100 North Senate Avenue
MC 61-53, IGCN 1003
Indianapolis, Indiana 46204-2251

On the 16 day of June 2013.


Loretta Shaffer
Administrative Program Assistant
Planning and Administration Section

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7009 1680 006 7676 2465 (Green)
____ (Perry)

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